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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,929	11/19/2003	Karl Guthrie	P 6040.13006	3155
74310 7590 02/26/2009 Portland Intellectual Property, LLC 900 SW Fifth Avenue, Suite 1820 Portland, OR 97204				
EXAMINER				
LUGO, CARLOS				
ART UNIT		PAPER NUMBER		
3673				
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02/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,929

Applicant(s)

GUTHRIE ET AL

Examiner

CARLOS LUGO

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-36, 55-58 and 71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-36, 55-58 and 71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicant's RCE filed on January 23, 2009.

Claim Objections

2. **Claims 34 and 58 objected** to because of the following informalities:

- Claim 34 Line 2, add the phrase –to provide fall protection to a user- between the words “space” and “comprising” as was shown in the claims on December 3, 2007.
- Claim 58 Line 2, add the phrase –to provide fall protection to a user- between the words “space” and “comprising” as was shown in the claims on December 3, 2007.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 58 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 58 recites that the toggle bar spring open. At the instant, it is unclear how it is spring open since the claim fails to claim a spring member. In order to continue with the examination, a broad interpretation will be given to the limitation. Appropriate correction is required.

Further, the claim omit essential structure in order to be capable of perform. The hole plug is essential since the toggle bar portion will be inserted to keep the closed position. At the instant, the claim recites the step of disposing the toggle bar in a closed position, but there is no structure capable of performing that step. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 34-36, 58 and 71 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio, US Pat No 4,615,514 to Hamlin and further in view of US Pat No 3,288,014 to Mortensen.

Regarding claim 34, Temple discloses a bolt comprising a flexible cable (1) and a toggle bar (3) connected to the end of the cable. The bolt is capable of holding a user to prevent the user from falling. The toggle bar is adapted to pivot between a closed position for insertion through the hole and an open position in which the bar cannot be withdrawn.

However, Temple fails to disclose that the bolt further comprises a hole plug, that an end of the toggle bar is adapted for locking engagement with the hole plug in the closed position, a plug biasing spring for biasing the hole plug toward the toggle bar,

a toggle pivot control member for manipulation of a toggle bar and that the hole plug includes separate apertures for the cable and the control member.

Onofrio teaches that it is well known in the art to provide a similar device that includes a rod connected to a bar, and a hole plug (16') that is fitted in a hole of a structure capable of centering the device in place. Onofrio illustrates that the plug has a "substantially" cylindrical hole plugging portion circumferentially engaging the hole (22). Onofrio further teach the use of a plug biasing compression spring (26) for biasing the hole plug (16') toward the toggle bar.

Hamlin teaches that it is well known in the art to provide a hole plug (36) that includes a recess that is capable of receiving and holding a toggle bar in a closed position.

Mortensen teaches that it is well known in the art to provide a cylindrical plug (10) that engages the cylindrical surface of the hole (Figure 2).

It would have been obvious to one having ordinary skill in the art to provide the device described by Temple with a hole plug, as taught by Onofrio, Mortensen and Hamlin, in order to held the bar in a closed position and to center the device when is placed with respect to the structure.

Hamlin teaches that it is well known in the art to use of a toggle pivot control member (24 and 26) for manipulation of a toggle bar between open and closed positions of the toggle bar. The toggle pivot control member includes a handle end (25 and 27) and a control end (28 and 30) attached to the toggle bar.

Mortensen teaches that it is well known in the art to provide a plug (10) that includes apertures (Figures 5 and 6) so that a member (38) and a pivot control member (26) can extend in a respective aperture.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Temple with a control member, as taught by Hamlin, in order to manipulate the toggle bar between an open and a closed positions.

Further, it would have been obvious to provide temple with a hole plug that comprises respective apertures for the members that extends through the plug, as taught by Mortensen, in order to separate the members so as to prevent any rupture or damage between the members that pass through the plug.

As to claim 35, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches that the end of the toggle bar is adapted for releasable retention in a recess of the hole plug to provide the locking engagement.

As to claim 36, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches that the end of the toggle bar is tapered to provide for the retention.

As to claims 58 and 71, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches a method for anchoring to an object having a hole therethrough leading to an opening space comprising the steps of providing a safety toggle bolt having a cable member and a toggle bar pivotally connected to the cable; locking the toggle bar in a closed position; the step of inserting at least the toggle bar portion through the hole; and the step of pushing on the cable member so as to cause the toggle bar

to open and thereby become oriented in the opening space so as to prevent the toggle bar portion from passing back through the hole.

7. **Claims 55-57 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio, US Pat No 4,615,514 to Hamlin and in view of US Pat No 3,288,014 to Mortensen, and further in view of US Pat No 5,209,621 to Burbidge.

Temple, as modified by Onofrio, Hamlin and Mortensen, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar returns spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Temple's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after been inserted through the opening.

Response to Arguments

8. Applicant's arguments filed on January 23, 2009 have been fully considered but they are not persuasive.

With respect to the rejection in view of Learnihan, after further review, the rejection has been withdrawn because the claim language requires pushing on the cable in order to cause the toggle bar to open, while Learnihan teaches pulling on the cable in order to allow the toggle bar to open.

As to the rejection in view of Temple, as modified by Onofrio, Hamlin and Mortensen, the argument is not persuasive. Mortensen teaches that it is well known in the art to provide a hole plug engaging the cylindrical surface of the hole. Therefore, the rejection is maintained.

Further, a 112 2nd paragraph rejection to claim 58 has been made on the record. Correction is required.

Finally, the applicant now took out the phrase "to provide fall protection to a user" from claims 34 and 58. According to the two previous interviews, this limitation was critical. Therefore, the applicant is required to provide that limitation again on the claims or the interpretation previously given to the claims by the examiner, not taking consideration of that limitation, would be reinstated. At the instant, the claims will be examined as requiring that the toggle device is to provide fall protection to a user. Correction is required.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARLOS LUGO whose telephone number is (571)272-7058. The examiner can normally be reached on 10-7pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 3673

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos Lugo/
Primary Examiner
Art Unit 3673

February 25, 2009.